

**THE REPUBLIC OF UGANDA,  
IN THE HIGH COURT OF UGANDA  
AT KAMPALA  
(COMMERCIAL DIVISION)  
HCCS NO 245 OF 2014**

**MAKA MOTOR WORKS LIMITED}.....PLAINTIFF**

**VS**

**CIVIL AVIATION AUTHORITY}.....DEFENDANT**

**BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA**

**FINAL JUDGMENT**

The Plaintiff, Messieurs Maka Motor Works Ltd, commenced this action against the Defendant Messieurs Civil Aviation Authority by summary suit under the provisions of Order 36 of the Civil Procedure Rules for recovery of **Uganda shillings 308,702,438/=** together with interest at court rate from the date of judgment until payment in full and costs of the suit. The Defendant subsequently filed **Miscellaneous Application No. 390 of 2012** for unconditional leave to defend the action and file a written statement of defence in accordance with the procedure in defended suits.

On 23 October 2012 a consent order was entered granting the Defendant leave to file a defence with costs in the cause. Subsequently the Plaintiff filed an amended plaint principally maintaining its action but admitting that it had been paid some monies by the Defendant. The Plaintiff admitted that out of the previous claim of **Uganda shillings 308,702,438/=**, a sum of **Uganda shillings 57,972,220/=** was paid by the Defendant and only **Uganda shillings 250,730,000/=** remained owing from the Defendant. The Plaintiff further averred in the amended plaint that pending assessment of costs of the suit, the Defendant undertook to pay a **sum of Uganda shillings 250,972,220/=**. However the Defendant in further breach of the contract/agreement unilaterally revised the sum payable downwards to **Uganda shillings 147,795,214/=** and proposed that each party bears its own costs. On the basis of the persistent and constant breach of contract the Plaintiff suffered loss and damages. In the particulars of loss and damages the Plaintiff claims **Uganda shillings 250,972,220/=**; interest on that sum at the rate of 28% per annum from 1 August 2011 until payment in full; general damages; interest on general damages at court rate from the date of filing the suit until payment in full and costs of the suit.

*Decision of Hon. Mr. Justice Christopher Madrama*

The dispute was after closure of pleadings referred for ADR using the court annexed mediation process which did not succeed. In the written statement of defence the Defendant admitted certain paragraphs of the plaint. In paragraph 10 thereof the Defendant admitted that through a reconciliation process a **sum of Uganda shillings 147,795,214/=** was arrived at and duly communicated to the Plaintiff.

After several adjournments on the ground that the Defendant's Counsel was absent for one reason or other, the suit proceeded ex parte and was heard and final submissions made by the Plaintiff's Counsel. Before judgment could be delivered the Defendant applied to set aside the ex parte proceedings whereupon the Plaintiff's Counsel in the proceedings of the application applied for judgment on admission and a detailed partial judgment was delivered on 26 February 2014 in which all the relevant facts are given. I will set out part of the partial judgment so as to demonstrate what issues remained for determination by court. The partial judgment between pages 4 and 7 thereof and dated 26<sup>th</sup> of February 2014 is as follows:

“Subsequently on 10 October 2013 the Plaintiff appeared and the hearing proceeded ex-parte on the basis of the affidavit of service showing that the Defendant was duly notified. The Plaintiff testified and closed its case and was given up to 14<sup>th</sup> of October 2013 to file and serve the written statement on the Defendant as well. The Plaintiff's Counsel wrote to the legal manager of the Applicant/Defendant in a letter dated 11 October 2013 enclosing submissions and notifying the Defendant to file a response by 28 October 2013. The letter was received by the Defendants on 16 October 2013 and the submissions were also received accordingly. Evidence of service was filed on court record on 24 October 2013 by way of the affidavit of Kambuzi Joseph Kasolo. The acknowledged documents comprising the hearing notice, and submissions were attached to the affidavit.

In a letter dated 24<sup>th</sup> of October 2013 Civil Aviation Authority wrote to the Plaintiff's Counsel in a letter which was filed on court record on 29 October 2013 and copied to the registrar indicating that the Defendant had considered and approved a final payment of the amount due to the Plaintiff of **Uganda shillings 51,389,706/=** and payment of costs at a reasonable rate. The letter was written for purposes of having a full and final settlement of the dispute. On 31 October 2013 Cranmer Tayebwa appeared for the Plaintiff but the Defendant was not represented and Counsel prayed that the court should proceed to give judgment. The court set judgment date as the 20<sup>th</sup> of December 2013 at 9:30 AM. Finally the record shows that on 18 December 2013 I sent a note to the registrar informing the registrar that there was an application to set aside the order to proceed ex parte and it would be irregular to proceed with the delivery of the judgment without considering the right of being heard in the application.

The application had been filed on court record on 31 October 2013 it had however not been issued by the registrar. I have noted that the application was issued on 20 January 2014. Obviously judgment was not delivered due to the above circumstances.

I have further noted that the letter of Civil Aviation Authority dated 24<sup>th</sup> of October 2013 and filed on court record on 29 October 2013 had been filed prior to the application which was filed on 31 October 2013.

Before dealing with any other matter, the Applicant's letter of 24<sup>th</sup> of October 2013 and filed on court record on 29 October 2013 admits the Plaintiffs claim as contained in the letter of the Plaintiff to the registrar filed on court record on 12 July 2013 and written on the same day. In that letter it was written that the Defendant was indebted to the Plaintiff for a sum of **Uganda shillings 199,184,924/=** out of which **Uganda shillings 147,795,214/=** was paid in December 2012 after the filing of the suit. Consequently the Plaintiff maintained in that letter that **Uganda shillings 51,389,706/=** remained unpaid at the time of writing the letter. Secondly the court was notified that the parties failed to agree on the rate of interest, the money on which it accrues and from what time.

I have additionally considered that the amended plaint has a claim for **Uganda shillings 250,972,220/=**. It is admitted that in December 2012 after the filing of the amended plaint, the Defendant paid **Uganda shillings 147,795,214/=**. This leaves the balance of Uganda shillings 102,997,006/= if the sum paid is subtracted from the sum claimed in the plaint. The letter of the Plaintiff's Counsel dated 12<sup>th</sup> of July 2013 and filed on court record the same day however revised the figure claimed to **Uganda shillings 199,184,924/=** as the principal claim agreed by the parties after mediation efforts. If the payment of December 2012 is subtracted from that figure, the amount that is left would be **Uganda shillings 51,389,706/=**. This is the amount that has been admitted by the Defendant in the letter dated 24<sup>th</sup> of October 2013.

I have further considered the submissions of the Plaintiff which had been filed on the court record on 16 October 2013. On the last page of the submissions it is submitted that **Uganda shillings 51,389,709/=** remained outstanding out of an amount of **Uganda shillings 199,164,920/=**. The submissions also deal with the question of when the interest started running and the amount and damages and costs.

In the circumstances and without much ado judgment on admission is entered for the sum of **Uganda shillings 51,389,706/=** admitted by the Defendant and the court noted that a further **Uganda shillings 147,795,214/=** was admitted and paid to the Plaintiff and that the Plaintiff is entitled to this amount already paid. In the premises the total claim of the Plaintiff of **Uganda shillings 199,184,920/=** is awarded to the Plaintiff. However Uganda shillings **Uganda shillings 147,795,214/=** has already been paid out of this amount leaving due to the Plaintiff the sum of **Uganda shillings 51,389,706/=**. This caters for the

entire principal claim of the Plaintiff as far as the liquidated sums are concerned and judgment is entered under order 13 rules 6 of the CPR accordingly. What is left for trial is the question of interest, damages and costs. The application of the Applicant to set aside ex parte proceedings can therefore only be confined to whether the Applicant should be heard on the question of the Plaintiffs claim for interest, damages and costs.”

The final part of the partial judgment is clear that what was left for determination are the issues of whether interest, damages and costs and what quantum are payable by the defendant. The application for judgment on admission was made in February 2014 when the Plaintiff's Counsel appeared and the Defendants Counsel was supposed to deal with the application to set aside ex parte proceedings. On 26 February 2014 and by consent of the parties the Plaintiff/Respondent conceded to the application for setting aside the ex parte order with costs in the cause. It was agreed that the Applicant shall file its witness statement and serve the Respondent before 5 March 2014 and the hearing shall proceed for cross examination. Hearing was going to be confined to the trial of the Plaintiff's claim for interest, damages and costs. In light of the admissions of the Defendant, the matter was fixed for hearing both parties on the question of the Plaintiffs claim for interest, damages and costs. On the date fixed for hearing the Defendant's Counsel did not turn up and the Plaintiff's prayed for final judgment to be made on the basis of previous submissions.

I must note that a witness statement was filed on behalf of the Defendant on 28 April 2014 and it purported to be the witness statement of the Corporation Secretary Mr Simon Muwanguzi. The witness statement is however not signed by anybody. The Defendant's Counsel also filed on the same day the Defendant's submissions which submissions are not signed. It should be noted that the Plaintiff's Counsel had already completed the Plaintiff's case and had filed closing submissions before the Applicant applied to set aside the ex parte proceedings.

In the Plaintiff's written submissions, the Plaintiff states that it has shown justification for an award of general damages. The Plaintiff had been denied access to the money without justification for over two years and was involved in a cat and mouse chase with its creditors including banks. The Plaintiff's business was not spared because of the Defendant's default. In the premises the Plaintiff's Counsel prayed for general damages of **Uganda shillings 100,000,000/=** and interest thereon at court rate from the date of judgment till payment in full. On the liquidated demands admitted the Plaintiff sought for payment of interest at the rate of 23% per annum from first of November 2011 up to payment in full.

In the unsigned written submissions of the Defendant's Counsel the only submission is that the delay in paying the Plaintiff was caused by the failure of the Plaintiff to furnish its invoices or supporting documents as was required and therefore the interest and damages claimed are not conscionable because the Plaintiff seeks to gain from its own fault. Notwithstanding the fact that the written submissions of the Defendant's Counsel are not signed by anybody, there is no admissible testimony either orally or in writing in support of the Defendant's submissions. The

*Decision of Hon. Mr. Justice Christopher Madrama*

evidence of the Plaintiff remains unchallenged. Save for letters of the Defendant admitting liability as contained in the partial judgment of the court there is no other material upon which to consider the Defendant's defence.

The above facts notwithstanding I have found the following factors relevant. It is admitted by the Plaintiff subsequent to filing its amended plaint that the Defendant is indebted to the Plaintiff for a total sum of **Uganda shillings 199,184,920/=**. Out of this amount the Plaintiff was paid in **December 2012** after the filing of this suit a sum of **Uganda shillings 147,795,214/=**.

The testimony of Moses Luzinda the Managing Director of the Plaintiff is that the Plaintiff was prequalified to service, repair and fit new spare parts on the Defendant's motor vehicles. Up to the year 2012, the Plaintiff serviced, repaired and fitted new spare parts on the motor vehicles of the Defendant. He testified that the Defendant would sometimes and if there was no urgency issue a Local Purchase Order to the Plaintiff for the repairs of any other works to be done on its motor vehicles and call the Plaintiff to collect it for repairs or send it with one of the Defendant's drivers to the Plaintiff's garage. By November 2011 a sum of **Uganda shillings 308,702,438/=** was due and owing to the Plaintiff from the Defendant. When the Plaintiff demanded for payment, the Defendant failed to pay. Subsequently the Plaintiff on 9 August 2012 served on the Defendant a statutory notice of intention to sue. On 21 June 2012 the Plaintiff filed this suit against the Defendant under summary procedure. On 6 July 2012 the Defendant filed an application for leave to defend the suit. Pursuant to advice from the court to explore the possibility of an out of court settlement, the parties filed a consent order for the Defendant to file a defence on the terms that costs of the application would be in the cause. Finally during reconciliation meetings between the Plaintiff and the Defendants officials in July, August and September 2012, it was agreed that the Defendant owed the Plaintiff a sum of **Uganda shillings 250,730,438/=** which the Defendant agreed to pay. However subsequent to the agreement, the Defendant again refused to honour its obligation whereupon the Plaintiff amended its plaint to claim the sum agreed upon during the reconciliation meetings. The Defendant unilaterally and in breach of the agreement during the reconciliation meetings, revised the sum payable to **Uganda shillings 147,705,214/=** as a full and final payment. In December 2012, the Defendant paid to the Plaintiff a sum of **Uganda shillings 147,795,214/=**. The Plaintiff was dissatisfied with the part payment and demanded for interest, damages and costs of the suit. The matter was then referred to the court annexed mediator whereupon the Plaintiff agreed to forfeit a sum of **Uganda shillings 19,962,964/=** for repairs that had been done without LPO's (Local Purchase Orders). The Defendant agreed again to pay an additional sum of **Uganda shillings 51,389,709/=**. PW1 testified about what was agreed during the mediation meetings which facts are inadmissible since no consent judgment was signed by the parties pursuant to the mediation hearings. Consequently PW1 maintained that the Plaintiff was greatly inconvenienced by the behaviour of the Defendant. He further testified that the current commercial rate of interest is 23% per annum. PW1 prayed for interest on the total claim of **Uganda shillings 199,184,920/=**

from 1 January 2012 until payment. He further prayed that the sum of **Uganda shillings 147,705,214** is subtracted from the final total amount.

I am satisfied that **Uganda shillings 147,705,214/=** was paid in December 2012 after the filing of the suit. The Plaintiff would be entitled to reasonable interest from 1 January 2012 until when the Plaintiff was paid in December 2012 being a period of about one year. Interest is awarded at the rate of 21% per annum on the sum of **Uganda shillings 147,705,214/=** for one year only.

The sum which remained unpaid was the sum of **Uganda shillings 51,389,706/=**. Interest is awarded on the sum at 21% per annum from 1 January 2012 until payment in full.

As far as the claim for general damages is concerned the general rule is that an award of interest is normally compensatory in claims for money. The statement of common law is found in **Halsbury's laws of England fourth edition reissue volume 12** (1) paragraph 1063 thereof at page 484 and is to the effect that upon breach of a contract to pay money due, the amount recoverable is normally limited to the amount of the debt together with such interests from the time when it became payable under the contract or as the court may allow.

The Plaintiff additionally claims general damages and has the burden of proving on the balance of probabilities that damages are the natural or probable cause of the breach beyond the claim for interest which has been awarded and is meant to be compensatory in that respect.

As far as general damages are concerned, the general principle for the guidance of court in the award of damages is laid down by the East African Court of Appeal in the case of **Dharamshi vs. Karsan [1974] 1 EA 41** and is the common law doctrine of *restitutio in integrum*. It is the principle that the Plaintiff should be restored as nearly as possible to a position he or she would have been had the injury or breach complained of not occurred. In this particular case the only breach is the failure to pay the money due when it was due. I.e. money was due in November 2011. This principle is stated in **Halsbury's laws of England fourth edition reissue volume 12** in its definition of general damages as those damages which will be presumed to be the natural or probable consequence of the wrong complained of; with the result that the Plaintiff is required only to assert that such damage has been suffered.

The Plaintiff's unchallenged testimony was that it had borrowed money from creditors and was therefore is required to pay interest. The Plaintiff suffered damages but the extent of the damages suffered was not proved. General damages would only be awarded on the ground of being the probable consequence of borrowing money to provide services to the Defendant. Borrowing money to provide services is a probable fact. The award of interest restores the Plaintiff to a position of capacity to pay its creditors on monies borrowed. However that implies that any damages incurred by the Plaintiff for non use of the claimed money beyond the interest of 21% awarded on the principal sum claimed is not factored in. In the premises the Plaintiff will be

awarded general damages representing 14% of the claim of **shillings 199,184,920/-** and in the premises the Plaintiff is awarded a sum of **Uganda shillings 27,885,888/=** as general damages.

The Plaintiff is additionally awarded interest on the general damages from the date of judgment till payment in full at the rate of 14% per annum.

As far as the claim for costs is concerned, costs follow the event and the Plaintiff is awarded costs of this suit.

Judgment delivered in open court the 30<sup>th</sup> of May 2014

**Christopher Madrama Izama**

**Judge**

Judgment delivered in the presence of:

Counsel Cranmer Tayebwa for the Plaintiff

Counsel Joseph Okwalinga for the Defendant

Charles Okuni: Court Clerk

**Christopher Madrama Izama**

**Judge**

**30/May/2014**